

Donald Phillips

From: Donald Phillips
Sent: Monday, October 21, 2019 5:57 AM
To: Peter Romary
Cc: Donald Phillips
Subject: RE: Petition and Consent Order

Peter:

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I will be in Superior Court most of the day today and will have limited availability.

Thank you.
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Donald K. Phillips
Assistant City Attorney
P.O. Box 7207
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Tel: (252) 329-4426
Fax: (252) 329-4626
Email: dkphillips@greenvillenc.gov
Website: www.greenvillenc.gov



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From: Peter Romary <peter.romary@qverity.com>
Sent: Sunday, October 20, 2019 10:02 PM
To: Donald Phillips <DKPhillips@greenvillenc.gov>
Subject: Petition and Consent Order

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Managing Partner, QVerity Legal

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From: Donald Phillips
Sent: Monday, October 21, 2019 5:58 AM
To: Mark Holtzman; Shari S. Groccia; Mike Montanye; Shari S. Groccia
Cc: Donald Phillips
Subject: FW: Petition and Consent Order

FYI (Please read Mr. Romary's latest email and my response below). Let's discuss.

Donald

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From: Peter Romary <peter.romary@qverity.com>
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To: Donald Phillips
Subject: Re: Petition and Consent Order

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Donald Phillips

From: Donald Phillips
Sent: Monday, October 21, 2019 12:46 PM
To: Rhonda Wilkerson
Cc: Donald Phillips
Subject: Interim Chancellor Gerlach Matter--Petition and Consent Order
Attachments: Re: Petition and Consent Order; Re: Petition and Consent Order

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Sent: Monday, October 21, 2019 6:40 AM
To: Donald Phillips
Subject: Re: Petition and Consent Order

Thanks, Donald.

Based on what I have from witnesses I know that no police were seen as he left Sup Dogs and I know there were none on his side of the street when he was getting into his car (not sure about when he went into Club 519, nor about Still Life, nor about 5th Street Annex.

It might be easiest (and impose less on your time) if you could just have a look at him leaving Sup Dogs and then him getting in his car -- if witnesses are right then those should be good and maybe we can consent to those and then just put in the order that the remaining videos will be saved / preserved from that night for say 12 months and that, if we view them and there are officers in then we will return to court having given officers right to be heard or, if no officers are in there (and I'll give times) then they can be released.

I know that some folks around Greenville have said the President plans to make a decision this week and the fear is that any endorsement of Gerlach is a tacit endorsement of the conspiracy theory --

I'm also happy to pull together times (windows as don't have knowledge of tapes), places etc that could go into order.

Apologies again on this, but it is national and international news (the Pandora's Box that Mr. Gerlach opened against police and judges) -- but happy to just go with 2 short times and return on others only if needed.

Between us, I was stunned that the "independent investigators" called and never followed up -- but, they have made that choice and probably better as their report can become public record I believe.

Best wishes,

Peter

On Mon, Oct 21, 2019 at 5:57 AM Donald Phillips <DKPhillips@greenvillenc.gov> wrote:

Peter:

Although the thought of having this matter completed this week sounds great, I do not believe that can practically occur. For example, as discussed with you by telephone, once you file the N.C.G.S. § 132-1.4A(g) proceeding, "any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency," "shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding." So, any and all ECU police officers, ALE, ABC, and GPD officers who may in any portion of the footage requested (to the extent that they are, and herein not saying that they are—I have not seen the recordings), will have to be notified (along with

the heads of their agencies) to determine whether they want to be heard at a hearing. This will take longer than a week.

Assuming this notification prong can be fully addressed without the need for a hearing, then it is conceivable for me to then prepare a proposed Consent Order and submit same to the Court out of session. This will take time for me to prepare and I certainly cannot guarantee that it can be done this week.

I will be in Superior Court most of the day today and will have limited availability.

Thank you.

Donald

Donald K. Phillips

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: dkphillips@greenvillenc.gov

Website: www.greenvillenc.gov



From: Peter Romary <peter.romary@qverity.com>
Sent: Sunday, October 20, 2019 10:02 PM
To: Donald Phillips <DKPhillips@greenvillenc.gov>
Subject: Petition and Consent Order

Good evening, Donald:

Judge Foster is on the ECU BoV and as such cannot sign a consent order -- however, Judge JC Cole is in town this week and I am informed that if request is narrow (so no PD need information and chance to object) and as long as we can arrange an agreement between us then the signing of a consent order in Chambers and the pick up of the videos (plus preservation of others could be effectuated this week).

The reason for the alacrity is that there is a rumor that a decision will be made this week and, if Gerlach is reinstated, it will be because his story about a "set up" (which as we discussed begins with "corrupt cops") is being accepted.

As you know, Halloween is almost upon us and the State and National PBA and FoP want to be sure that headlines or belief in this "conspiracy theory" does not impact police nor behavior towards police.

The tapes my clients are interested in getting copies of are:

- a) the ones showing Gerlach leaving Sup Dogs with 3-4 people in his group -- important that we have that one -- NO police should be in that per witnesses as none were around
- b) less so, and if any cops in then we will be fine just watching that one.
- c) video of him leaving 519 in an Uber or Lyft with a female and male of college age -- again, if any cops in that then would be happy to just view.
- d) video of him coming up to his car on 5th street, video showing him entering his car and then driving off -- again, per witnesses NO police should be in that as no police were around in the area.

The order would be brief in nature and I'll chat with you about it and petition, but would state that videos are for delivery and use of PBA and FoP and that my clients will also provide copies to the BoG for their oversight of the investigation (the governing board who are separate and distinct from General Administration -- GA were the ones who, I understand authorized and are directing the investigation -- the videos will not be released to the media by my clients except if police officers are explicitly or implicitly accused or it is inferred that officers were involved in a "set up" or "conspiracy" involving Dan Gerlach and then they may be used to defend the police or police officers in the same forum or forums in which such allegations shall have been made).

As a former police officer I hope you agree this is fair as officers cannot speak out for themselves. NO officers were involved in any of this and this is what has caused the extreme upset.

I am taking my wife for minor surgery in the AM but plan to contact Faris and let him know what is going on, then I would come down (having worked on wording of petition and consent order with you) file order, meet you, go and see Judge Cole to get it signed and then pick up the videos and drop them off with my clients --- doing do before any melee could occur with Halloween or any editorial could be written alleging that off duty police and a "dark cabal" set this up -- we are (my clients and I) very concerned about the "pick on GPD" narrative that could end in violence against cops here or elsewhere.

Many thanks, my friend -- apologies for the rushing of this BUT with Judges, police, BoT and BoG members plus "former political adversaries" being blanket accused by this man and his friends, we need to move (on our side) as fast as we can.

Very best wishes,

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Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

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If you as intended recipient have received this e-mail incorrectly, please notify the sender (via e-mail) immediately.

--
Peter Romary
Partner and General Counsel, QVerity
Managing Partner, QVerity Legal

Donald Phillips

From: Peter Romary <peter.romary@qverity.com>
Sent: Monday, October 21, 2019 6:51 AM
To: Donald Phillips
Subject: Re: Petition and Consent Order

Apologies -- as an aside, I have been texting with Faris Dixon and he is good to go - when we are ready.

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Peter:

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Peter Romary
Partner and General Counsel, QVerity
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Donald Phillips

From: Peter Romary <peter.romary@qverity.com>
Sent: Monday, October 21, 2019 8:28 PM
To: Donald Phillips
Subject: Video Surveillance Footage

Good Evening, Don:

I was contacted today by someone who works very closely with the House Majority Leader, John Bell, who has taken a keen interest in the matter of the Gerlach videos.

I forwarded the messages from you and Mike stating that the videos were preserved and also conveyed that, while they can subpoena footage, that you and I are working on a consent order and that Judge Cole is in Greenville, Faris Dixon has been notified of the request and has no objection conveyed to me and also that I have it from witnesses that the video we most want has no officers within it.

I am also willing, if you could send a draft of prior consent orders, to complete the order -- police have registered concerns that Homecoming is this weekend and Halloween is just around the corner and that there are concerns that the law firm investigating have no requested -- we are not asking anyone contact them, rather we will convey to the Board of Governors.

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That would mean you would have just one video to inspect and I could drive the consent order -- I could pop down on Weds / Thurs, file, serve on you and Faris have a Judge sign it and then pick up the videos from you.

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From: Donald Phillips
Sent: Tuesday, October 22, 2019 9:00 AM
To: Mark Holtzman; Shari S. Groccia
Cc: Donald Phillips; April Alligood
Subject: FW: Video Surveillance Footage

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Donald Phillips

From: April Alligood
Sent: Tuesday, October 22, 2019 9:11 AM
To: Donald Phillips
Subject: RE: Video Surveillance Footage

Shari is out of the office today and Chief is in firearms training until the afternoon.
Let me know if I need to schedule something for tomorrow maybe?

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From: Donald Phillips
Sent: Tuesday, October 22, 2019 9:14 AM
To: April Alligood
Cc: Donald Phillips
Subject: RE: Video Surveillance Footage

Tomorrow will work. Let me know what is best for them and please send me an invite.

Donald

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Sent: Tuesday, October 22, 2019 8:25 PM
To: Donald Phillips
Subject: Re: Petition and Consent Order

Hi, Donald:

I'm not sure if Rep. Bell (Majority Leader) was able to get up with you today -- he is wanting to see the video when I get it. I understand that Dr. Roper is making a decision this week and it is highly likely that he will be adopting the story of Mr. Gerlach that corrupt GPD officers set him up on orders from a "cabal" of Judges, Lawyers, BoT, BoG Members along with political adversaries from Mr. Gerlach's days with Governor Easley -- this was what national and state PBA and FoP were trying to avoid because the original story made national and international press.

I have conveyed through to the Speaker; President Pro Tem and Majority leader that there is only one video currently being sought (others could be obtained at other times), witnesses state that no LEOs were present and that I have offered to draft up the order or the piece describing what would be needed.

I do not know how long Judge Cole will be there this week and / or if Marvin is back. The verbiage would be:

FINDINGS OF FACT:

All parties are properly before the Court and all persons or institutions required by law to be served with notice have been served and no objections have been raised. Further the Court has subject matter jurisdiction over this matter,

The petitioner, Peter Romary, Attorney-at-Law, and Greenville Police Department by and through their attorney, Donald Phillips hereby stipulate and agree to the release of copies of footage from video surveillance to the petitioner of the area in front of 212 E. 5th Street, Greenville NC between the times of 0210 and 0230 in the early morning hours of Thursday 26th of September, 2019, showing a man believed to be Mr. Dan Gerlach coming into the picture displayed on the video, preparing to enter a vehicle, entering a vehicle and driving away along 5th Street in Greenville, NC.

The petitioner represents and agrees that he is obtaining said video on behalf of his clients the NC Police Benevolent Association and the NC Fraternal Order of Police and / or their chapters to be held and used by them in defense of their members and other law enforcement officers against any explicit or implicit allegations of misfeasance or malfeasance by said officers at any time and that said association / order may publish the same in any equivalent forum or forums in which any allegations whether implicit or explicit against any law enforcement officers are, have been or at any time may be made.

Further, the NC Police Benevolent Association and NC Fraternal Order of Police and / or their chapters may deliver the same to representatives or senators in the North Carolina General Assembly and to the University of North Carolina General Administration and / or Board of Governors with the request that they use the same solely for such purposes as they see fit within their constitutional and statutorily mandated oversight duties for the proper and effective functioning of the UNC system and its constituent institutions as well as their supervisory role over employees of the UNC system or constituent institutions.

It is further agreed that the Greenville Police Department shall maintain and preserve, for a period of one year from the date of the entry of this order, any and all tapes created between the hours of 2100 on Wednesday 25th September, 2019 and 0230 on Thursday 26th September that show Mr. Dan Gerlach in the monitored area of Greenville, NC. This includes but is not limited to views of the area outside of Sup Dogs, Greenville, NC between 2100-2250, Wednesday 25th September, any footage of the area outside of Club 519 Greenville, NC between 2240 and 0030, Wednesday 25th September-Thursday 26th September. Footage showing the outside of the front door of Club 519 between 0140-0200 Thursday September 26th.

If the parties and any other person required by law to be informed agree, at some point within the next twelve months, that such videos may be released to Peter Romary, under the same terms and conditions as are set out herein, then the parties stipulate that they may be released for distribution as outlined above. If no agreement can be reached then the matter shall come on to be heard upon a properly calendared and noticed date before the Superior Court.

CONCLUSIONS OF LAW:

The parties are properly before the Court and all parties have been properly served.

That the Court has jurisdiction over the subject matter and parties hereto.

That the parties to this proceeding do stipulate and agree to the facts as set forth above which are hereby incorporated by reference as conclusions of law.

NOW THEREFORE IT IS ORDERED ADJUDGED AND DECREED that Petitioner shall be provided with a copy of the Police Surveillance Video showing the person and area outlined in the FINDINGS OF FACT above, that being footage from any and all cameras showing the area outside of 212 E. Fifth Street, Greenville, NC and Mr. Dan Gerlach's presence and activities there between the time of 0210 and 0230 on the morning of Thursday September 26th, 2019.

Further that the video footage set forth in the FINDINGS OF FACT above shall be maintained for a period of one year from the date of the entry of this order and shall, where the parties can reach agreement, be provided to the Petitioner or otherwise may be brought on for a motion regarding the same to be heard in the Superior Court upon proper notice to all parties required by law to receive notice.

NO COSTS are taxed at this time.

This the ____ day of _____, 2019

Superior Court Judge Presiding

On Mon, Oct 21, 2019 at 6:50 AM Peter Romary <peter.romary@qverity.com> wrote:
Apologies -- as an aside, I have been texting with Faris Dixon and he is good to go - when we are ready.

On Mon, Oct 21, 2019 at 5:57 AM Donald Phillips <DKPhillips@greenvillenc.gov> wrote:

Peter:

Although the thought of having this matter completed this week sounds great, I do not believe that can practically occur. For example, as discussed with you by telephone, once you file the N.C.G.S. § 132-1.4A(g) proceeding, “any law enforcement agency personnel whose image or voice is in the recording and the head of that person’s employing law enforcement agency,” “shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding.” So, any and all ECU police officers, ALE, ABC, and GPD officers who may in any portion of the footage requested (to the extent that they are, and herein not saying that they are—I have not seen the recordings), will have to be notified (along with the heads of their agencies) to determine whether they want to be heard at a hearing. This will take longer than a week.

Assuming this notification prong can be fully addressed without the need for a hearing, then it is conceivable for me to then prepare a proposed Consent Order and submit same to the Court out of session. This will take time for me to prepare and I certainly cannot guarantee that it can be done this week.

I will be in Superior Court most of the day today and will have limited availability.

Thank you.

Donald

Donald K. Phillips

Assistant City Attorney

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From: Peter Romary <peter.romary@qverity.com>
Sent: Sunday, October 20, 2019 10:02 PM
To: Donald Phillips <DKPhillips@greenvillenc.gov>
Subject: Petition and Consent Order

Good evening, Donald:

Judge Foster is on the ECU BoV and as such cannot sign a consent order -- however, Judge JC Cole is in town this week and I am informed that if request is narrow (so no PD need information and chance to object) and as long as we can arrange an agreement between us then the signing of a consent order in Chambers and the pick up of the videos (plus preservation of others could be effectuated this week).

The reason for the alacrity is that there is a rumor that a decision will be made this week and, if Gerlach is reinstated, it will be because his story about a "set up" (which as we discussed begins with "corrupt cops") is being accepted.

As you know, Halloween is almost upon us and the State and National PBA and FoP want to be sure that headlines or belief in this "conspiracy theory" does not impact police nor behavior towards police.

The tapes my clients are interested in getting copies of are:

- a) the ones showing Gerlach leaving Sup Dogs with 3-4 people in his group -- important that we have that one -- NO police should be in that per witnesses as none were around
- b) less so, and if any cops in then we will be fine just watching that one.
- c) video of him leaving 519 in an Uber or Lyft with a female and male of college age -- again, if any cops in that then would be happy to just view.
- d) video of him coming up to his car on 5th street, video showing him entering his car and then driving off -- again, per witnesses NO police should be in that as no police were around in the area.

The order would be brief in nature and I'll chat with you about it and petition, but would state that videos are for delivery and use of PBA and FoP and that my clients will also provide copies to the BoG for their oversight of the investigation (the governing board who are separate and distinct from General Administration -- GA were the ones who, I understand authorized and are directing the investigation -- the videos will not be released to the media by my clients except if police officers are explicitly or implicitly accused or it is inferred

that officers were involved in a "set up" or "conspiracy" involving Dan Gerlach and then they may be used to defend the police or police officers in the same forum or forums in which such allegations shall have been made.

As a former police officer I hope you agree this is fair as officers cannot speak out for themselves. NO officers were involved in any of this and this is what has caused the extreme upset.

I am taking my wife for minor surgery in the AM but plan to contact Faris and let him know what is going on, then I would come down (having worked on wording of petition and consent order with you) file order, meet you, go and see Judge Cole to get it signed and then pick up the videos and drop them off with my clients --- doing do before any melee could occur with Halloween or any editorial could be written alleging that off duty police and a "dark cabal" set this up -- we are (my clients and I) very concerned about the "pick on GPD" narrative that could end in violence against cops here or elsewhere.

Many thanks, my friend -- apologies for the rushing of this BUT with Judges, police, BoT and BoG members plus "former political adversaries" being blanket accused by this man and his friends, we need to move (on our side) as fast as we can.

Very best wishes,

Peter

--

Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

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Peter Romary
Partner and General Counsel, QVerity
Managing Partner, QVerity Legal

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Partner and General Counsel, QVerity

